

FILED
DISTRICT COURT OF GUAM

NOV 16 2005

DISTRICT COURT OF GUAM
TERRITORY OF GUAM

MARY L.M. MORAN
CLERK OF COURT

DON CRISOLOGO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Criminal Case No. 00-00047

Civil Case No. 04-00044

ORDER

Petitioner Don Crisologo ("Crisologo") filed a Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255 ("Motion"). The Court has carefully reviewed the pleadings and relevant law in the matter. Crisologo maintains that after he was sentenced, he advised his counsel to file a Notice of Appeal. Despite this instruction to counsel, no notice was filed and his appellate rights were forfeited. This claim by Crisologo is sufficient to warrant inquiry. The Government has not submitted any documentation or affidavit to refute Crisologo's claim. The Court finds that *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1029, (2000) and *United States v. Sandoval-Lopez*, 409 F.3d 1193 (9th Cir. 2005) are directly applicable to the instant case. Accordingly, in light of the Crisologo's claim the Court has the following options:

[t]he district court can hold an evidentiary hearing to decide whether [Crisologo's] allegation is true, and if it is, vacate and reenter the judgment, allowing the appeal to proceed. Or, if the state does not object, the district court can vacate and reenter the

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1 judgment without a hearing and allow the appeal to proceed,
2 assuming without deciding that the petitioner's claim is true.

3 *Sandoval-Lopez*, 409 F.3d 1193, 1198 (9th Cir. 2005).

4 On October 12, 2005 the Government indicated that it did not object to the Court
5 vacating and reentering the judgment in this matter without a hearing in order to revive
6 Crisologo's ability to appeal to the Ninth Circuit. *See* Docket No. 46. Accordingly, the Court
7 hereby vacates the previous judgment in CR 00-00047. The clerk is hereby ordered to reenter the
8 judgment against Crisologo.

9 Crisologo is hereby advised that he has 10 days from the entry of the judgment of
10 conviction to file his Notice of Appeal in this matter. *See* FED. R. APP. P. 4(b)(1)(A)(I). He is
11 further advised that if he is unable to pay the costs of the appeal he has the right to ask for
12 permission to appeal *in forma pauperis*. *See* FED. R. APP. P. 24.

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14 **IT IS SO ORDERED** this 16 day of November, 2005

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18 **ROBERT CLIVE JONES***
19 **United States District Judge**
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* The Honorable Robert Clive Jones, United States District Judge for Nevada, by designation.